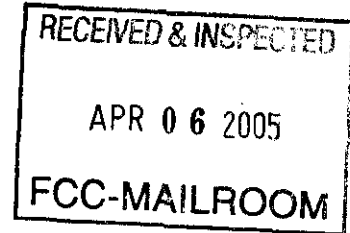


Before the
Federal Communications Commission
Washington, D.C. 20554



In the Matter of)

Chariton Valley Communication Corporation, Inc.)

CC Docket No. 94-102

Petition For Temporary Limited Waiver of)
Section 20.18(f) of the Commission's Rules)
)
)

Order

Adopted: April 1, 2005

Released: April 1, 2005

By the Chief, Public Safety and Critical Infrastructure Division

I. INTRODUCTION

1. In this Order, we address Chariton Valley Communication Corporation, Inc.'s Petition for Temporary Limited Waiver of Section 20.18(f) of the Commission's Rules, filed February 18, 2005 (Petition). Chariton Valley Communication Corporation, Inc. (Chariton) is a Tier III PCS licensee providing service to portions of rural Missouri.¹ As a Tier III Carrier,² Chariton is obligated to provide Phase II E-911 service to fifty percent of its Public Service Answering Point(s) (PSAP(s)) service area or population within six months of receiving a request for such service from a PSAP. Chariton received such a request from the City of Columbia and Boone County, Missouri, PSAP (Boone PSAP) on August 18, 2004.³ Chariton submits that its requested waiver is warranted because of Chariton's inability, to date, to locate a vendor capable of providing a Phase II solution.⁴ However, Chariton claims that it now has identified a suitable vendor and will be able to offer Phase II service no later than October 18, 2005.⁵

¹ Chariton's service area is comprised of the Jefferson City (BTA-217), Kirksville (BTA-230) and Columbia (BTA-090) Basic Trading Areas in Missouri. It has no subscribers itself and serves only "roaming" traffic. See Petition at 1.

² Tier III carriers are defined as non-nationwide Commercial Mobile Radio Service (CMRS) providers with no more than 500,000 subscribers as of the end of 2001. See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide Carriers, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841, 14848 ¶ 22 (2002) (*Non-Nationwide Carriers Order*). By comparison, Tier II carriers are those not among the five carriers with national footprints (the Tier I carriers) and that had over 500,000 subscribers as of the end of 2001. See *id.* at 14843, 14847 ¶¶ 7, 22.

³ See Petition at 2.

⁴ See *id.*

⁵ See *id.* at 3.

Chariton therefore requests that the Commission waive the provisions of Section 20.18(f) of the Rules until that date.⁶ For the reasons stated below, we grant Chariton's waiver request.

II. BACKGROUND

2. The Commission's E911 Phase II rules require wireless carriers to provide PSAPs the Automatic Location Identification (ALI) information for 911 calls that satisfies specified accuracy requirements. Carriers can provide ALI information by deploying location information technology in their networks (a network-based solution),⁷ Global Positioning System (GPS) technology in the subscribers' handsets (a handset-based solution),⁸ or a combination of location technology in both the network and handsets (a hybrid solution).⁹ Depending on the technology employed, the carrier must identify the location of the caller within certain accuracy and reliability standards.¹⁰ The Commission's rules contain phased-in approaches for both network-based and handset-based location technologies, requiring Tier III carriers to deploy Phase II service commencing September 1, 2003, or within six months of receiving a PSAP request, whichever is later.

3. Chariton has elected a network-based solution, claiming that location-capable handsets are not available for the GSM air interface that Chariton employs.¹¹ Tier III licensees that employ a network-based solution must provide Phase II E-911 service to at least fifty percent of the PSAP's coverage area or population beginning September 1, 2003, or within six months of a PSAP request, whichever is later; and to 100 percent of the PSAP's coverage area or population within eighteen months of such a request or by September 1, 2004, whichever is later. According to Chariton, on August 18, 2004, the Boone PSAP requested Phase I and Phase II service from Chariton.¹² Pursuant to Section 20.18(j)(3) of the Commission's Rules,¹³ Chariton thus had fifteen days, *i.e.*, until September 2, 2004, in which to request

⁶ See *id.*

⁷ Network-based location solutions employ equipment and/or software added to wireless carrier networks to calculate and report the location of handsets dialing 911. These solutions do not require changes or special hardware or software in wireless handsets. See 47 C.F.R. § 20.3(c), *Network-based Location Technology*.

⁸ Handset-based location solutions employ special location-determining hardware and/or software in wireless handsets, often in addition to network upgrades, to identify and report the location of handsets calling 911. See 47 C.F.R. § 20.3(c), *Location-Capable Handsets*.

⁹ Hybrid solutions combine network-based equipment with handset-based location technologies to provide more robust methods of determining the location of a caller through the use of multiple inputs. For example, Verizon Wireless has deployed an assisted-GPS (A-GPS) system combined with an advanced forward link trilateration (A-FLT) system. See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Verizon Wireless, CC Docket No. 94-102, Order, 16 FCC Rcd 18364, 18366, 18370 ¶¶ 8, 17 (2001).

¹⁰ The standards for Phase II location accuracy and reliability are as follows: (1) for network-based technologies, 100 meters for 67 percent of calls, and 300 meters for 95 percent of calls, and (2) for handset-based technologies, 50 meters for 67 percent of calls, and 150 meters for 95 percent of calls. See 47 C.F.R. § 20.18(h).

¹¹ See Petition at 2. The Global Systems for Mobile (GSM) digital wireless telephone standard is used in the United States, as well as in Europe.

¹² See *id.*

¹³ 47 C.F.R. § 20.18(j)(3).

documentation from the Boone PSAP regarding the PSAP's ability to receive and use Phase II data elements. Thereafter, the PSAP has fifteen days from service of such a request to respond. If it fails to do so, the six-month implementation period is tolled until the PSAP provides the requested documentation.¹⁴ Here, Chariton alleges that it sought documentation from the Boone PSAP, and that the PSAP has declined to respond to verbal or written inquiries from Chariton,¹⁵ but Chariton does not claim it did so within the time allotted, and there is nothing in the materials submitted by Chariton to suggest that it made a timely request for the documentation. However, Chariton speculates whether the Boone PSAP "is even capable of using the Phase II data elements."¹⁶

4. Chariton bases its claim that it will be Phase II capable by no later than October 18, 2005 on the fact that it is negotiating with a Phase II E-911 solution vendor, GBSD Technologies, Inc. (GBSD), which Chariton believes can timely provide an accurate and cost effective solution for Chariton's network.¹⁷ It anticipates that, within forty-five days of the date of its Petition, it will have an agreement with GBSD to provide its technology, which can be rendered operative within five months.¹⁸ However, because of the possibility of unanticipated delay in the implementation of the new technology, Chariton has requested a waiver to allow it to delay meeting the fifty percent Phase II requirement until October 18, 2005.¹⁹ It also requests "similar relief" with respect to any future PSAP requests that it may receive prior to April 18, 2005.²⁰ Chariton notes that it is not requesting waiver of the requirement that it provide Phase II service to 100 percent of the Boone PSAP's operating area or population within eighteen months of a PSAP request.²¹

III. DISCUSSION

A. APPLICABLE WAIVER STANDARDS

5. The Commission has recognized that smaller carriers may face extraordinary circumstances in meeting one or more of the deadlines for Phase II deployment.²² Section 1.3 of the Commission's Rules establishes that the Commission may grant relief from its rules for good cause shown.²³ The Commission generally finds good cause to grant a waiver of its rules where the particular facts make strict compliance inconsistent with the public interest if applied to the petitioner and when the relief requested would not

¹⁴ *Id.*

¹⁵ *See* Petition at 2.

¹⁶ *Id.* at 6 n.16.

¹⁷ *See id.* at 3.

¹⁸ *See id.*

¹⁹ *See id.*

²⁰ *See id.*

²¹ *See id.* at 1 n.3.

²² *See Non-Nationwide Carriers Order*, 17 FCC Rcd at 14846 ¶ 20; Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Order to Stay*, 18 FCC Rcd 20987 at ¶ 2 (2003) (*Order to Stay*).

²³ 47 C.F.R. § 1.3. *See also* Section 1.925 of the rules, 47 C.F.R. § 1.925(b)(3).

undermine the policy objective of the rule in question.²⁴ A petitioner must demonstrate that, in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest.²⁵

6. In its 2003 *Order to Stay*, the Commission provided specific guidance on the types of factual showings that would provide sufficient support for a waiver request.²⁶ The Commission emphasized that carriers must provide clear evidence supporting the grounds they rely upon in seeking relief. For example, to the extent that a carrier bases its request for relief on delays that were beyond its control, it must submit specific evidence substantiating the claim, such as documentation of the carrier's good faith efforts to meet with outside sources whose equipment or services were necessary to meet the Commission's benchmarks.²⁷

If a carrier claims that it is technically infeasible to meet the Commission's accuracy standards, it must provide "concrete, specific plans to address the accuracy standards and . . . [its] testing data and other evidence to demonstrate [its] inability to meet the accuracy requirements."²⁸ As the Commission repeatedly has cautioned, carriers may not rely only on generalized statements about technical infeasibility. Instead, they must provide detailed technical data on the particular portions of their network or items of equipment that prevent them from complying with E911 requirements. To the extent that a carrier is requesting a waiver in order to accommodate its transition from one air interface to another, it must demonstrate "a clear path to full compliance" by, for example, providing concrete evidence of its documented commitment to a date certain for that transition to be accomplished.²⁹ When carriers rely on a claim of financial hardship as grounds for a waiver, they must provide sufficient and specific factual information.³⁰ A carrier's justification for a waiver on extraordinary financial hardship grounds may be strengthened by documentation demonstrating that it has used its best efforts to obtain financing for the required upgrades available from federal, state, or local funding sources.³¹ In addition, carriers seeking relief are expected to work with state and local E911 coordinators and with all affected PSAPs in their service area, so that community expectations are consistent with the carriers' projected compliance deadlines.³²

7. For licensees relying on a network-based solution, the Commission's *Non-Nationwide Carriers Order* granted a temporary stay of Phase II deadlines for Tier III carriers that had filed petitions

²⁴ See *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*); see also *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); 47 C.F.R. § 1.925.

²⁵ See *WAIT Radio*, 418 F.2d 1159.

²⁶ See *Order to Stay*, 18 FCC Rcd at 20996-97 ¶¶ 22-29.

²⁷ See *id.* at 20996-97 ¶ 25.

²⁸ *Id.* at 20997 ¶ 26 (citing *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14853 ¶ 41).

²⁹ *Id.* at 20997 ¶ 27.

³⁰ See *id.* at 20997 ¶ 29. We note that the Commission generally is disinclined to find that financial hardship alone is a sufficient reason for an extension of the E911 implementation deadlines. *Id.*

³¹ See *id.*

³² See *id.* at 20997 ¶ 28. The Commission advised carriers that they should provide supporting documentation of their efforts to coordinate with the PSAPs or E911 coordinators as evidence of good faith. *Id.*

for relief.³³ Specifically, the Commission required Tier III carriers that employ a network-based location technology to provide:

- Phase II E911 service to at least fifty percent of the PSAP's coverage area or population beginning September 1, 2003 or within six months of a PSAP request, whichever is later; and
- Phase II E911 service to one-hundred percent of the PSAP's coverage area or population by September 1, 2004 or within eighteen months of a PSAP request, whichever is later.³⁴

Furthermore, the *Non-Nationwide Carriers Order* provided that, once a PSAP request is received, that Tier III carriers shall, within six months or by September 1, 2003, whichever is later, install any hardware and/or software in their networks necessary to enable the provision of Phase II service.³⁵

8. Following adoption of the *Non-Nationwide Carriers Order*, a number of Tier III carriers which had not previously requested extensions, and thus were not covered by that Order, filed petitions for relief. Other Tier III carriers, which already had been granted relief, sought additional relief. In response, in the *Order to Stay*, the Commission described the types of showings required to justify waiver of the wireless E911 rules, opened a window for those Tier III carriers to file supplemental information to support their requests for relief, and required the filing of status reports detailing the carriers' efforts to deploy Phase II E911 services.³⁶ The Commission also stayed the application of the wireless E911 rules for those Tier III carriers seeking relief, pending a ruling on their waiver petitions.³⁷ The stay permitted additional time for the Tier III carriers to supplement the record and for the Commission to address the issues

³³ See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14852-14853 ¶¶ 32-33. The Commission also granted relief for Tier II carriers. See *id.* at 14849 ¶¶ 26-27.

³⁴ See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14852 ¶ 32.

³⁵ See *id.*

³⁶ Tier III carriers granted relief under the *Non-Nationwide Carriers Order* or the *Order to Stay* must file annual reports detailing: (1) the number of Phase I and Phase II requests from PSAPs (including those the carrier may consider invalid); (2) the carrier's specific technology choice (*i.e.*, network-based or handset-based solution, as well as the type of technology used); (3) the status on ordering and/or installing necessary network equipment; (4) information on whether ALI-capable handsets are now available, and whether the carrier has obtained ALI-capable handsets or has agreements in place to obtain these handsets (if the carrier is pursuing a handset-based solution); (5) the estimated date on which Phase II service will first be available in the carrier's network; and (6) information on whether the carrier is on schedule to meet the ultimate implementation date of December 31, 2005 (if the carrier is pursuing a handset-based solution). *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14843 ¶ 35; *Order to Stay*, 18 FCC Rcd at 20997-98 ¶ 30.

³⁷ See *Order to Stay*, 18 FCC Rcd at 20989 ¶ 3.

presented in the requests for relief.³⁸ On March 22, 2005, the Commission adopted the *Tier III Order*³⁹ resolving all waiver requests pending as of the date of enactment of the *ENHANCE 911 Act*.⁴⁰

B. Decision

9. As an initial matter, we note that Chariton's difficulty in finding a suitable technology vendor to deploy a Phase II compliant network-based solution is shared by other licensees, as discussed in the *Tier III Order*.⁴¹ Although Chariton implies that it may not have received a valid PSAP request because the Boone PSAP may be incapable of using Phase II data elements,⁴² we note that Chariton has not claimed that it timely sought documentation that would enable it to verify that contention. Chariton asserts only that -- at some unspecified time -- it requested the PSAP to supply such documentation and that the PSAP allegedly failed to respond. Accordingly, unless otherwise persuaded, we believe that Chariton, by failing to demonstrate that its request for documentation was timely, has waived its right to dispute the ability of the Boone PSAP to use Phase II data. Therefore, we conclude that Chariton received a valid PSAP request on August 18, 2004. We are very concerned that Chariton waited until February 18, 2005, the final day of the six-month deadline for initiating the requested Phase II service, before filing its request for relief. We caution Chariton that requests for relief from the Commission's rules should be filed in a timely manner and as soon as it is evident that facts or circumstances have resulted in a need for such relief. We also believe that, if true, the contention that the Boone PSAP has refused to respond to communications from Chariton is wholly inconsistent with the degree of cooperation we expect from licensees and PSAPs in bringing E-911 service to the nation. We therefore strongly encourage the parties to institute a dialog in furtherance of that important public interest goal.

10. Based on the information presented to the Commission in the waiver requests dealt with in the *Tier III Order*, we accept Chariton's argument that it was precluded from instituting a handset-based solution because location-capable GSM handsets are not available. We are also mindful of the fact that the characteristics of a given licensee's system, for example, its cell-site locations, geometry, height and density,⁴³ all affect the suitability of particular variants of location technology, and that there is no "one size fits all" solution. If, as Chariton claims, the GBSD technology it has selected will be more accurate and less costly to implement than other technologies,⁴⁴ we believe a brief deferral of Chariton's obligation

³⁸ See *id.* at 20994-96 ¶¶ 17-21.

³⁹ Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, E911 Phase II Compliance Deadlines for Tier III Carriers, CC Docket No. 94-102, *Order*, FCC 05-79 (adopted Mar. 22, 2005) (*Tier III Order*).

⁴⁰ National Telecommunications and Information Administration Organization Act -- Amendment, Pub. L. 108-494, § 106, 118 Stat. 3986, 3991 (2004) (*ENHANCE 911 Act*).

⁴¹ See *Tier III Order*, FCC 05-79 at ¶¶ 94-97 (granting an extension of the network-based Phase II deadlines, given the carrier's efforts to review vendor and technology options for a network-based solution that would meet the Phase II requirements in light of the technical challenges presented by the topography of its network); see also *id.* at ¶ 106 (noting problems encountered by the carrier with its initially-selected location vendor), ¶¶ 160-61 (describing efforts by the carrier to identify a location vendor that would be able to meet the Phase II requirements in a timely and cost-effective manner).

⁴² See *supra* n.15.

⁴³ See Petition at 5-6.

⁴⁴ See *id.* at 5.

to provide Phase II service will benefit the PCS users that it serves and the public interest, generally. Finally, we believe that Chariton has shown a clear path to compliance through its negotiations with GBSD, its intention of concluding a contract with GBSD within forty-five days, and its assurance that it will meet the benchmark of providing Phase II service to 100 percent of its coverage area or population within eighteen months of receiving a PSAP request, *i.e.*, by February 18, 2006. For the foregoing reasons, we grant Chariton's request to extend, until October 18, 2005, its obligation to begin providing Phase II E911 service to fifty percent of its coverage area or population. As requested,⁴⁵ we also extend this relief to any future PSAP requests that Chariton may receive prior to April 18, 2005.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to the Commission's exercise of authority under Section 1.3 of the Commission's rules, that the foregoing Order IS ADOPTED.

IT IS FURTHER ORDERED, that the Chariton Valley Communications Corporation, Inc. Petition for Temporary Limited Waiver of Section 20.18(f) of the Commission's Rules IS GRANTED.

This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION



Michael J. Wilhelm
Chief, Public Safety and Critical Infrastructure Division,
Wireless Telecommunications Bureau

⁴⁵ See *id.* at 3.